IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6853 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAVINDAR AMBALAL PAREKH

Versus

GRAM PANCHAYAT

Appearance:

MR ANANT S DAVE for Petitioners

MR SHIVANG SHUKLA for MR YN OZA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/05/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties, perused the special civil application and affidavit-in-reply. From the affidavit-in-reply it is admitted case of respondents that permission is granted to the petitioners to carry out their business at the disputed site. It is

also an admitted fact that respondents were charging from the petitioners, the licence fees. So it is difficult to accept that the petitioners are encroachers or trespassers on this site. Earlier, one of the petitioners has come up before this court and petition has been disposed of with direction to respondents to decide the representation filed by him for allotment of alternative site. That petition is decided with directions to the respondents to decide the representation of the petitioner therein but it is the say of learned counsel for the petitioners that it has not been decided so far It is a case where the petitioners are not trespassers and before they are asked to go from the site in dispute, it is necessary for the respondents to follow the principles of natural justice. The learned counsel for the petitioners has fairly stated before this court that the petitioners are not against the development of city. They are also not the persons who want to create hindrance or traffic hurdles by continuing at the existing site. They are in favour of development of city but as it is a question of their bread and butter, in case they have been displaced from the site in question without having been given any alternative site, certainly it will prejudice their right to livelihood. It is contended that alternative accommodation/ site has to be given to the petitioners by respondents but in this direction the respondents have not made any efforts whatsoever. Not only this, the representation filed by one of the petitioners though was ordered to be decided by respondents expeditiously, has not been decided so far. In the facts of the case and the fairness with which the petitioners have come before this court with clear understanding that in case they are displaced from the present site, they may be allotted alternative site, it is just and reasonable that this aspect of the matter has to be considered by respondents. The learned counsel for the respondents has given out that waste land is not available with municipality. It has further been given out that the Government has given direction to allot the waste land but it is not available with municipality. It has further been given out that the Government be given direction to allot waste land to respondents to provide alternative site to the petitioners.

#. I do not find any substance in any of the contentions. Once the respondents have decided to get possession of the land in dispute from the persons who are lawfully there all efforts have to be made to see that these persons who are earning their livelihood and carrying on their business are being provided alternative

site. The learned counsel for the respondents, on being asked by the court fairly states that the Gram Panchayat has not made any effort or even not cared to send letter to the Government for allotment of waste land to it for allotment thereof to the petitioners and till this matter is considered by the Gram Panchayat, status-quo as on today has to be maintained by both the parties.

#. In the result, this special civil application succeeds and the same is allowed and the Gram Panchayat is directed to consider the case of petitioners for allotment of alternative site. The Gram Panchayat shall file before this court, the decision taken by it for allotment of alternative site to the petitioners. In case it decides not to allot any alternative site to the petitioners, a reasoned order may be passed and a copy of the same be sent to the petitioners. Liberty is granted to petitioners for revival of the special civil application in case of difficulty. Rule made absolute accordingly with no order as to costs.

.....
(sunil)